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S E C R E T SECTION 01 OF 03 ABU DHABI 000316

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FOR NEA A/S WELCH AND PM A/S HILLEN

E.O. 12958: DECL: 01/30/2016

TAGS: [MARR](#) [MASS](#) [PREL](#) [AE](#)

SUBJECT: TAKING ANOTHER LOOK AT THE UAE DCA

REF: A. 04 ABU DHABI 3615

[B](#). 04 ABU DHABI 4062

[C](#). 05 ABU DHABI 72

[D](#). 05 ABU DHABI 406

[E](#). 04 ABU DHABI 4335

Classified By: CLASSIFIED BY AMBASSADOR MICHELE J. SISON, REASONS 1.4 (B) AND (D).

[1](#)1. (S/NF) Summary: Embassy wishes to raise with the Department a proposed way forward to address longstanding concerns over the UAE Defense Cooperation Agreement (DCA) (refs A-D). We recommend reviving regular meetings of the U.S.-UAE Joint Committee on the DCA. That committee has not convened since May 2001, but under terms of the DCA, the Joint Committee is supposed to meet frequently to resolve differences. If that does not work, we recommend that the Department explore with DoD the possibility/advisability of reviewing C-175 negotiating authority for a DCA, although we know that could be a difficult and lengthy process.

[1](#)2. (S/NF) The UAE maintains the DCA cannot be implemented because it was never ratified by each of the seven emirates. There is also disagreement on jurisdiction over DoD personnel, as well as which U.S. personnel are covered under the DCA. Several incidents involving DoD personnel in recent years have underscored the need to resolve these differences. While we have relied to date on ad hoc in-country diplomatic intervention to ensure that DoD personnel were not subjected to UAE legal jurisdiction, thousands of DoD personnel are potentially at risk. More recently, our hosts also have indicated that they are unwilling to proceed with CENTAF and NAVCENT's crucial expansion efforts at key UAE installations without a formal basing agreement governing our activities. In the past, basing discussions have crossed U.S. DCA red-lines (specifically, criminal jurisdiction of U.S. military personnel). These unresolved issues could have negative ramifications for CENTCOM's future plans in the UAE under the proposed Integrated Global Posture and Basing Strategy.

[1](#)3. (S/NF) Summary continued: Embassy has been in periodic contact with CENTCOM and OSD on this matter; it has been a "watch out for" on many scenesetters we have sent senior military visitors. CENTCOM and OSD/Policy staffs are also considering options; a possible Joint Military Commission meeting in Washington in May (date not yet confirmed by OSD) may provide the next opportunity to address this issue with the UAE. Our political-military relationship with the UAE remains one of the Embassy's highest priorities. The UAE has continued its excellent support of the war on terror and it has cooperated with us in OIF, as well as providing active combatants in Afghanistan for OEF. The UAE continues to provide basing and overflight for U.S. reconnaissance and refueling assets, and naval logistical support. The steady-state number of DoD personnel in the UAE remains at approximately 1500, with as many as an additional 70,000 transients (mostly US Navy personnel on liberty) per year. However, for the cooperation to expand and stabilize, we need a functioning DCA. End Summary.

Background:

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[1](#)4. (S/NF) The DCA was signed by both parties on July 23, [1](#)994. Article IX of the DCA establishes that the agreement entered into force upon signature, has an initial period of 12 years (until July 2006), and thereafter remains in force in perpetuity, unless terminated by either party on one year's notice. The UAE, however, has refused to recognize that the DCA is in effect.

[1](#)5. (S/NF) Over the years, the UAE has posited several reasons for its position. Most recently, the UAE has stated that the DCA will not be in force until ratified by all seven emirates. The UAE has taken no efforts to ratify the DCA. The current language of the DCA states that the U.S. retains criminal jurisdiction over all DoD personnel and that U.S. personnel on temporary assignment to the UAE may enter the country, with notification, on an ID card and orders. This language is consistent with other U.S.-Gulf country

agreements. The UAE seeks criminal jurisdiction over DoD personnel in the UAE and, more recently, has stated all DoD personnel entering the UAE are required to possess a valid passport and visa. In a January 2001 DCA review meeting, the UAE requested renegotiation of the criminal jurisdiction provisions as a precondition to ratification.

16. (S/NF) We have been told by OSD/General Counsel that surrendering criminal jurisdiction of U.S. personnel to the UAE is not acceptable. Such a move would likely impact other regional bilateral agreements. More importantly, UAE law does not meet U.S. standards of fairness and due process:

-- there is no legal requirement that Miranda-type warnings be provided to a suspect, nor to provide counsel to suspects at early stages of proceedings, such as during the taking of statements.

-- there is no clear constitutional or penal code provision addressing the burden of proof in criminal trials.

-- criminal cases involving non-Muslims may be referred to Sharia courts.

-- there is no jury system in the UAE.

Incidents Highlight Need for Functioning DCA

17. (S/NF) With the large number of U.S. personnel in UAE, we are at risk of a serious incident where a U.S. service member may be subjected to local law, Emirati due process, and, in some cases, Sharia law. There have been incidents involving U.S. military personnel that emphasize the risk posed by Emirati denial of the signed DCA. The issues of legal status and jurisdiction remain the sticking points. The following incidents highlight the need for a functioning DCA:

-- In April 1996, a traffic accident involving a U.S. sailor resulted in the death of an Emirati child and injury to four other UAE residents. The American was jailed without formal charges. The U.S. claimed jurisdiction, but the UAE maintained custody until a court found him guilty of wrongful death. After extensive interventions by the Embassy, involvement of a special OSD negotiating team, and the dispatch of the senior U.S. Navy international lawyer and ultimately the Judge Advocate himself, the American's prison sentence was suspended and he was released into U.S. custody in June.

-- In September 2004, four USAF airmen were involved in a single-vehicle accident in Abu Dhabi. Two of them were injured and manacled to their hospital beds, pending investigation of liability for the accident. It took six days for the UAE military and Abu Dhabi police to agree on jurisdiction and return the Americans to U.S. custody.

-- In June 2005, a Filipino national reported to the U.S. Navy and Naval Criminal Investigative Service that she had been raped by a U.S. sailor. She declined to report the incident to the Fujairah police or seek local medical attention out of fear that she would be arrested and deported. Had this incident been reported to local authorities, the sailor would have been placed in custody by local authorities and required to stay in country until his trial. The sailor was administratively transferred to the Naval Support Activity in Bahrain and is now awaiting courts-martial in Norfolk, Virginia.

-- With nearly 600 ship visits per year to the UAE, we periodically have had to request Dubai authorities release U.S. personnel to the Navy, following their detention by the local authorities for minor infractions.

18. (S/NF) In the more serious cases in which U.S. personnel were taken into custody by Emirati authorities, we have obtained their release after extensive interventions by the USG (except for the 1996 case, all cases were handled in-country). Our ad hoc arrangements have worked for the most part. But they are labor intensive and they may not suffice in the future if there is a serious accident or crime against UAE citizens. On this count, our Emirati interlocutors have been most clear: in cases of the rape or murder (including vehicular wrongful death determinations, as above) of an Emirati citizen, U.S. servicemembers will not be remanded to U.S. custody, but will be tried and punished under the UAE justice system. The individual emirates have recently instituted a policy where magistrates are physically located at each police station, thereby making the criminal arraignment process swifter. Our ability to perform any ad hoc diplomacy and settle issues financially before the servicemember is placed in custody is greatly lessened.

Raising DCA with the UAE

9. (S/NF) The Embassy's preferred approach would be to revive the DCA Joint Committee that has not convened since May 2001.

Members from the U.S. include the U.S. Embassy, United States Liaison Office, and U.S. Central Command, and appropriate representation from the UAE. Under the terms of the DCA, the Joint Committee is supposed to hold regular meetings in the UAE (the text says monthly, or more frequently if required). This way forward does not require C-175 negotiating authority, which a renegotiation of the DCA would. In the past, OSD has not been amenable to renegotiation of the DCA, but we understand that they are currently exploring options.

10. (S/NF) In addition, there may be several other opportunities in the coming months for the USG to raise the DCA with the UAEG:

-- We understand from CENTCOM that the second JMC may be scheduled for early May 2006 in Washington. As we approach that meeting, we will try to ascertain their position. At the first JMC in January 2005, UAE Armed Forces Chief of Staff, Lt. Gen. Hamad Thani, asked us to place DCA on the agenda, only to inform A/S Rodman during the meeting that he was not prepared to discuss it (refs C,D). Instead, he said he would follow up with a letter to the Embassy. We have yet to receive any correspondence from GHQ regarding DCA.

-- Abu Dhabi Crown Prince Sheikh Mohammed bin Zayed (MbZ) is planning a visit to Washington in May 2006 (not related to the JMC). He has already expressed his government's commitment to hosting U.S. forces on UAE soil. However, during a November 2004 meeting with General Abizaid, Sheikh Mohammed stated that the U.S. and the UAE need to negotiate a basing agreement. General Abizaid responded that the U.S.-UAE relationship, built on mutual trust and respect, was one of the most important relationships in his AOR. He undertook to follow up on the basing issue with Defense Secretary Rumsfeld (ref E).

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-- We would welcome a visit from senior Department representatives to Abu Dhabi during which time they could discuss DCA and other military cooperation issues with MbZ and others.

Effect on Cooperation

11. (S/NF) The UAE has continued its excellent support of the war on terror and it has cooperated with us in OIF and OEF. The UAE continues to accommodate our military presence on their soil, provide overflight for U.S. reconnaissance and refueling aircraft, and provide naval logistical support. However, the UAE's insistence on negotiating a government-to-government agreement formalizing our joint use of UAE military bases, infrastructure, and associated services, is having an effect on CENTAF and NAVCENT's crucial expansion plans at key UAE installations. Al-Dhafra Air Base is a key component of our relationship with the UAE, and plays a role in the ability of CENTCOM and CENTAF to project combat power in the AOR. Al-Dhafra is home to the 380th Air Expeditionary Wing, with more than 1400 CENTAF personnel, operating 14 KC-135 and four KC-10 air refueling tankers, as well as five U-2 surveillance aircraft and two Global Hawk remotely piloted vehicle. Al-Dhafra also hosts the UAE Air Warfare Center. The ports at Jebel Ali on the Arabian Gulf, and Fujairah on the Gulf of Oman, are also crucial to CENTCOM access and power projection in the region. Over 600 U.S. Navy ships visit the ports annually. State and DoD agree that continued access to UAE military facilities is vital to our strategic objectives in the region.

Comment:

12. (C) Embassy welcomes the Department's thoughts on a possible way forward with the DCA. Perhaps there are comparable situations elsewhere in the region that could be instructive. The first step is to revive the Joint Committee. If that does not work, we recommend that the Department explore with DoD the possibility/advisability of reviewing C-175 negotiating authority for a DCA, although we know that could be a difficult and lengthy process.

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